No. 18-422

In the Supreme Court of the United States

ROBERT A. RUCHO, ET AL.,

Appellants,

v.

COMMON CAUSE, ET AL.,

Appellees.

On Appeal from the United States District Court for the Middle District of North Carolina

BRIEF OF AMICUS CURIAE TEXAS HOUSE REPRESENTATIVE CARL ISETT IN SUPPORT OF APPELLANTS

JAMES E. TRAINOR, III
TRAINOR LAW FIRM, P.C.
4301 W. WILLIAM CANNON DR.
SUITE B150
AUSTIN, TX 78749
(512) 924-6501
TREY@TRAINORLAWTX.COM

JOSEPH M. NIXON
COUNSEL OF RECORD
NIXON LAW FIRM, P.C.
6363 WOODWAY DR.
SUITE 800
HOUSTON, TX 77057
(713) 550-7535
JOE@NIXONLAWTX.COM

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INTEREST OF AMICUS CURIAE[1]

The Honorable Carl Isett is a former seven term member of the Texas House of Representatives. Representative Isett was first elected in 1996 and participated in the redistricting process in 2001 and 2003 in the Texas Legislature. During his tenure he served as president of the bipartisan Texas Conservative Coalition, served on the Redistricting Committee, was elected by his colleagues to serve on the steering committee for the House Research Organization, served on the Appropriations Committee, and was chair of Budget Oversight for the Insurance Committee. Moreover, he was a candidate in the 2003 special election for the United States House of Representatives from the 19th district of Texas. Representative Isett is a regular commentator on the political process in Texas, and, owing to his former service with the House Research Organization, regularly advises on the process of enacting legislative proposals.

In advance of the 2020 Census and the 2021 redistricting effort in Texas, Representative Isett believes that Texas must ensure that redistricting faithfully follows all federal constitutional and statutory mandates, a requirement best fulfilled by adherence to the traditional redistricting criteria found in the

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[1] Counsel for all parties have consented to the filing of this brief. Pursuant to Rule 37.6, no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. Fair Lines America Foundation, a 501(c)(3) entity, provided funding for the preparation of this brief.

state constitution and procedural guidelines. This means that districts should be sufficiently compact and preserve communities of interest. Representative Isett believes that Article I, § 4 of the Constitution tells courts that any change in our community-based system of districts is exclusively a matter for deliberation and decision by our political branches, specifically the state legislatures, and that clear legal guidance on the issue of how much reliance upon traditional redistricting criteria can be taken is crucial to the forthcoming redistricting effort.

SUMMARY OF ARGUMENT

Legislatures have relied upon traditional redistricting criteria to draw districts void of racial criticisms. Traditional redistricting criteria are objective and designed to give legislators non-racial and non-partisan rules to follow. This case presents the clear question of whether the use of objective, traditional districting criteria creates a safe harbor from liability from allegations of partisan gerrymandering. Unless significant legal protection is given to the use of objective criteria in the redistricting process, it will be the courts, through litigation, and not the legislature, through legislation, who will draw new district maps every decade.

ARGUMENT

The State of North Carolina redistricting plan at issue in this case comports with traditional redistricting criteria. The North Carolina General Assembly followed the traditional redistricting criteria out of a legal obligation, and honoring such criteria limited the legislative discretion in drawing districts. The limitations imposed by the criteria should be a sufficient deterrent to a claim of partisan gerrymandering made by the Appellees and should protect North Carolina, or another state that similarly complies with its traditional redistricting criteria, from facing a federal partisan gerrymandering claim.

Most states use some form of traditional redistricting criteria in construction of their legislative districts. Because of the decision in *Shaw v. Reno*, 590 U.S. 630 (1993), and its progeny such as *Larios v. Cox*, 300 F.Supp.2d 1320 (N.D. Ga. 2004), *aff'd* 542 U.S. 947 (2004), *Stephenson v. Bartlett*, (*Stephenson I*), 355 N.C. 354, 562 S.E.2d 377 (2002), and *Stephenson v. Bartlett*, (*Stephenson II*), 357 N.C. 301, 582 S.E.2d 247 (2003), criteria are more important than ever before. In particular, a record of arbitrary disregard for redistricting criteria, unlike in this case, could fatally flaw a districting plan imposed by a legislature. The first accusation that would be made is that the plan's failure to follow state mandated rules of map drawing was indicative of racial predominance or of vote dilution.

While traditional redistricting criteria may vary widely from state to state,[2] they constitute a restriction upon unfettered partisan configuration of legislative districts. This in turn provides a sufficient limitation on partisan gerrymandering such that if a jurisdiction substantially adheres to its traditional redistricting criteria it should not be subject to litigation for partisan gerrymandering. However, each time the Court fails to sustain a theory, a new theory arises. For example, since the standing decision in *Gill v. Whitford*, 138 S.Ct. 1916 (2018), the Court has seen an increase in the number of gerrymandering cases.

I. NOT ALL DISTRICTING IS PARTISAN GERRYMANDERING

As a threshold matter, it is important to define what gerrymandering is, and more importantly for the present question, what it is not. Whenever political gerrymandering is mentioned, "heads nod sagely for the conversation is then on familiar ground." Robert G. Dixon, Jr., *Democratic Representation: Reapportionment In Law And Politics* 459 (1968). The gerrymander has a long, albeit dubious, history in American politics. Although the practice may have had its roots in the "rotten boroughs" of England,[3] it became a part of

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[2] A list of state constitutional and statutorily required redistricting criteria can be found at http://www.ncsl.org/research/redistricting/redistricting-criteria.aspx.

[3] So-called "rotten boroughs" are a different type of political manipulation that does not require bizarre shapes or geographic inflation but simply differential populations between districts. This problem is solved by vigorous enforcement of the one person-one vote principle. *See Baker v. Carr*, 368 U.S. 168 (1962);

American political folklore in 1812, courtesy of Massachusetts Governor Elbridge Gerry.

Governor Gerry signed into law a redistricting of Essex County which strung a series of towns together in a contorted manner. Gilbert Stuart (better known for his portraiture) was engaged in a conversation with the editor of the *Boston Weekly Messenger* over the map of the district. Stuart noticed one fairly compact district surrounded by the contorted district, and proceeded to sketch in a head, wings and claws, noting the likeness to a dragon. The editor thought it looked more like a salamander, whereupon Stuart is alleged to have said, "Better call it a 'Gerrymander.'" Ironically, Gerry had signed the bill only because he doubted the governor's power to veto a legislative districting.[4] *See* Robert Luce, *Legislative Principles: The History and Theory of Lawmaking by Representative Government* 397-98 (1930).

As is clear from the history of the first gerrymander, originally there were two critical components, a bizarre geographic configuration and the linking of disparate communities into a single district. This original definition would have been easily recognized by the founders. They envisioned districts which embraced communities with all of their countervailing interests and pressures as a check and balance on

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Wesberry v. Sanders, 376 U.S. 1 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964).

[4] Another irony is that Gerry's other accomplishments are often overshadowed by his gerrymander. He was a signer of the Declaration of Independence, delegate to the Constitutional Convention, twice elected to Congress, and elected Vice President of the United States with James Madison in 1812.

political faction. *See* The Federalist No. 10 and No. 55. As the founders recognized in such districts, representatives will be more inclined to be attentive to the individual concerns of their local community and less inclined to march in lockstep to the agenda of any particular political faction.

The original gerrymander was seen as an attempt to subvert those countervailing interests and pressures. In the years before *Baker v. Carr*, 368 U.S. 168 (1962), the legislative failure to redistrict at all, resulting in increasing malapportionment of legislative districts, was called the "silent gerrymander." *See,* Baker, *Gerrymandering: Sanctuary or Next Judicial Target, in* REAPPORTIONMENT IN THE 1970S 122 (N. Polsby, ed. 1971). Despite the fact this was called a gerrymander, when in reality this was a "rotten borough." This is an example that, as with so many terms, gerrymandering has morphed in the modern era to become a general pejorative for any districting system the user of the term thinks is "unfair." "It equally covers squiggles, multimember districting, or simple non-action, when the result is racial or political misrepresentation." Robert G. Dixon, Jr., *Democratic Representation: Reapportionment In Law and Politics* 460 (1968).

As applied to the case before the court, and all the partisan gerrymandering cases since *Davis v. Bandemer*, 478 U.S. 109 (1986), plaintiffs have sought to overlay some version of a proportional partisan result requirement on a system of community representation. What has gone generally unrecognized in the popular discussion is that these two concepts are, more often than not, at odds with each other.

Community based representation may result in proportional representation, but it is actually unlikely to have that result. This is because people live in various communities at disproportionate rates to their political affiliation. *See* Bill Bishop, *The Big Sort: Why the Clustering of Like-Minded America Is Tearing Us Apart* (2009). Moreover, placing a partisan overlay on community-based representation is directly at odds with the founders view of controlling the vicissitudes of political faction. The partisan overlay would have, in the founders' minds, actually increased the opportunities for partisanship.[5]

II. USING TRADITIONAL DISTRICTING CRITERIA LIMITS PARTISAN GERRYMANDERING

In the modern era of standards set out by the U.S Constitution and the Voting Rights Act, states have superseded those with many statutory redistricting requirements. States have, since the beginning of the Republic, adopted their own redistricting criteria, or principles, for drawing districting plans. Many of the principles, or criteria, are found in state constitutions or statutes adopted by a legislature (or commit-

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[5] The proportional representation systems of European parliamentary governments are profoundly different from the system envisioned by the United States Constitution. In the typical European system political parties receive seats in the parliament based upon their proportion of the vote and compromise with other political parties in order to form coalition governments. The founders, based upon their comments in the Federalist papers, intended for community-based representatives to moderate the views of their political parties in order to avoid conflict with the parochial needs and desires of their community-based constituencies.

tee that is called upon to draw a plan when the legislative process fails). Given the weighty nature of the criteria, and the fact that such measures are themselves the result of the deliberative political process, a legislature is legally bound to obey such dictates.

While each of the states has nuances to their criteria, the traditional districting criteria fall into six broad categories (1) compactness, meaning that there is a minimum distance between all the parts of a constituency, (2) contiguity, whereby all parts of a district are connected, (3) preservation of counties or political subdivisions, the avoiding of deliberate crossing of county, city, or town boundaries, (4) preservation of communities of interest, the ensuring that geographical areas, such as neighborhoods of a city or regions of a state, where the residents have common interests do not necessarily coincide with the boundaries of a political subdivision, such as a city or county, (5) preservation of core existing districts, the maintaining districts as previously drawn or determined through litigation, to the extent possible to provide for a continuity of representation, and (6) avoiding pairing incumbents, the avoidance of crafting districts that would create contests between incumbents.

These criteria can be adhered to in a myriad of different ways. For example, a state's criteria can be composed in a strict priority fashion that if adhered to strictly will create a formulaic drawing system that will leave the legislative body with little or no political discretion.[6] Alternatively, the map drawers

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[6] The most well-known formulaic draw is Iowa. Essentially the counties are put together in a manner that uses the lowest population deviation possible using whole counties. Because of

may be given the discretion to give priority to one criteria over another in one place of the map and not in other parts of the map. Most states are somewhere in between these two extremes.

Regardless of the strictness with which the criteria are enforced in the drawing of a map, the criteria constitute a very significant limitation on the political discretion available to a legislature. This limited discretion prevents partisan motivations from becoming the predominant motive in the drawing of any particular map since the predominant motive must be adherence to the traditional redistricting criteria.

Justice O'Connor recognized that adherence to the traditional redistricting criteria were a significant limit on the political discretion of the map drawers and that this fact should have significant legal effect as well. *Bush v. Vera*, 517 U.S. 952, 964 (1996). Unlike the other members of the Court, Justice O'Connor had participated in this process directly. She brought an important level of understanding of the operations of state legislatures into her opinions and decisions in these cases.[7] Justice O'Connor understood the important legal significance of traditional redistricting

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the basic homogeneity of Iowa's demography and the large number of small counties within the state this system works in Iowa but would be extremely difficult to replicate in any state beyond the upper Great Plains. North Carolina actually uses a formulaic draw for its state legislative districts but despite this face political gerrymandering litigation based on the holding in *Rucho* in state court.

[7] Arizona was a covered jurisdiction under § 5 of the Voting Rights Act and Republicans controlled the reapportionment process in 1971 when Justice O'Connor was a state senator.

criteria, in both the political and racial gerrymandering contexts.

Although Justice O'Connor was discussing the significance of traditional redistricting criteria in the racial gerrymandering context of her discussion, it is equally valid in the partisan gerrymandering context. In the *Vera* case, Justice O'Connor created a threshold standard which requires a state to subordinate its traditional redistricting criteria to racial considerations in order to be subjected to strict scrutiny. Justice O'Connor makes this point throughout her opinion by emphasizing "for strict scrutiny to apply, the plaintiffs must prove that other, legitimate districting principles were 'subordinated' to race." *Bush v. Vera*, 517 U.S. 952, 959 (1996). She goes on to elevate the violation of the states' traditional districting criteria to a threshold issue. In part II of the decision, Justice O'Connor states "the neglect of traditional districting criteria is merely necessary, not sufficient. For strict scrutiny to apply, traditional districting criteria must be subordinated to race. [Cite omitted] Nor, as we have emphasized, is the decision to create a majority-minority district objectionable in and of itself." *Id.* at 962.

Likewise, Justice O'Connor notes that states "may avoid strict scrutiny altogether by respecting <u>their own</u> traditional districting principles . . . and nothing we say today should be read as limiting 'a state's discretion to apply traditional districting principles,' [cite omitted] in majority-minority, as in other districts." *Id.* at 978 (emphasis added). She repeats this point in her concurrence when she says, "states may intentionally create majority-minority districts, and may

otherwise take race into consideration without coming under strict scrutiny . . . " so long as they do not subordinate traditional districting criteria to the use of race for its own sake or as a proxy. *Id.* at 993.

Given that traditional redistricting criteria uphold the concept of community-based representation it would seem that her comments have even more validity in the partisan gerrymandering context than they did in the racial gerrymandering context. It must not be the case that adherence to duly enacted, traditional neutral state criteria result in legal liability. If so, the effect is that most, if not all, state redistricting plans are in jeopardy.

In the present case, The North Carolina General Assembly's Joint Select Committee on Redistricting ("Joint Committee"), met, *sua sponte*, to consider criteria for a new congressional plan. The Joint Committee consisted of nineteen Senators and nineteen Representatives. During the proceedings, the Joint Committee considered and then, in an effort to provide clear direction for districting that avoided arbitrary or partisan decisions, adopted seven criteria to be used in drawing a new congressional plan. The North Carolina Assembly's criteria that they used as guideposts included reequipments for equal population, contiguity, political data, partisan advantage, preservation of an existing district, compactness, and incumbency. The Joint Committee stated that the criteria would not be ranked in order of importance, that drawing maps is largely a balancing act, but that making reasonable efforts at redistricting would not include violating any of the other criteria.

Understanding how each broad area of criteria limits legislative discretion will illuminate the limitation on partisanship that ensues from compliance with the requirement. Overarching the criteria themselves is the fact that criteria are the product of the legislative process, and, like all procedural rules for a deliberative body, serve as the time-honored guard against majoritarian rule.

Traditional redistricting criteria endure from decade to decade as a counterweight to the otherwise uncontrolled will of the then dominant political party. Failing to recognize that such traditional redistricting criteria thwart majoritarian impulses will have the effect of sanctioning a legislative body to disregard any state mandated criteria so long as it never runs afoul of federal law.

A. Compactness is a Non-partisan Criteria

The federal constitution does not have a requirement of compactness. *Gaffney v. Cummings*, 412 U.S. 735 (1973). However, a lack of compactness may draw expert criticism as evidence of racial or partisan gerrymandering. Courts have been reluctant to adopt a mechanical or mathematical test for compactness. Depending on the districts, compactness may be geographical or based on population. As long as the same method is used to determine compactness by legislatures, the benchmark demonstrated a compelling state interest and goal. States should be able to utilize and rely on the test of compactness as a clear tool to avoid accusations of impermissible gerrymandering.

The North Carolina General Assembly, relying upon the fact that previous federal courts had criticized

the lack of compactness, particularly in the 1st and 12th districts, adopted a compactness criteria that it would make reasonable efforts to construct districts in the 2016 Congressional Plan that improve the compactness of current districts and keep more counties and voter tabulation districts whole as compared to the enacted plan. The General Assembly even dictated that the division of counties shall be made for reasons of equalizing population, consideration of incumbency, political impact, and that reasonable efforts should be made not to divide a county into more than two districts. Importantly, the Joint Committee adopted this criterion on a bipartisan basis by a vote of 27-7.

The North Carolina General Assembly followed this criterion explicitly. In fact, the map divided only 13 counties and 13 voting districts (or precincts). Of the thirteen divided counties, 11 were counties with a population of 100,000 or more. Thus, smaller counties with populations under 100,000 were general wholly included in a specific district. When counties were divided, they were only divided once.

Compactness makes the excluding of unfriendly voters and the combining of friendly voters from disparate communities into a district far more difficult. The reliance upon compactness as a traditional redistricting criterion leads to an analytical view of districting and helps to preserve a state from litigation based upon partisan gerrymandering. Here, Appellees would have the court find that even were a legislature to rely upon compactness measures, it can still face liability for political gerrymandering even though partisanship had no part in the final districting decision.

B. Contiguity Ensures Legitimacy

Like compactness, there is no federal constitutional requirement that districts be comprised of contiguous territory. *Davis v. Bandemer*, 478 U.S. 109 (1986). However, courts have disallowed point and crisscross contiguity without contiguity being specifically mentioned in constitutional provisions. *Stephenson v. Bartlett*, (*Stephenson II*), 357 N.C. 301, 582 S.E.2d 247 (2003). Obviously, non-contiguous districts raise questions of purpose and legitimacy. It is rational for a state to require contiguous districts and, much like compactness, provides for pure motives when districting. Here, the North Carolina General Assembly specifically noted its intent to avoid federal litigation when the Joint Committee affirmed the concept of "point contiguity" would not be used. *See Shaw v. Hunt*, (*Shaw II*), 861 F.Supp 408, 468 (E.D.N.C. 1994), *rev'd*, 517 U.S. 899 (1996).

C. Preserving Counties and Political Subdivisions is a Clear and Objective Criteria

States have long required preservation of county lines in creating districts where possible. The rational interest on behalf of the state is obvious. Counties, as political subdivisions of the state, help administer elections. Each county has a chief elections officer who works with and reports to the state's chief election officer. Quite simply, the county creates ballots, supervises elections, and tallies votes on election night. County lines are a natural breaking point for districts. It makes little sense to have a few precincts on the other side of a county line unless there is an absolute compelling interest to do so. This is one reason state legislative lines have been allowed to vary slightly

from absolute one-man one-vote equality. *See Mahan v. Howell*, 410 U.S. 315 (1973); *Brown v. Thomson*, 462 U.S. 835, 842 (1983).

The exact same principle applies to other jurisdiction divisions. Where a municipality or city or school district benefits from representation, states should be allowed to recognize those lines in creating districts. Having meaninglessly scattered voting precincts outside of traditional political subdivisions serves no purpose in representative government.

There is a solid check on partisan gerrymandering when a state relies upon the traditional redistricting principle of preservation of counties and political subdivisions. The acceptance of whole portions of geography disregards the partisan effect of the addition or inclusion within a district and should allow a safe harbor from partisan gerrymandering claims. The North Carolina Assembly should be afforded this protection given its limited number of county splits as discussed previously.

D. Communities of Interest is a Legitimate State Policy

While less explicit than local government jurisdictional boundaries, "historical" boundaries, or those dividing "communities of interest," are often discernable, and, in some states, have very explicit, determinable boundaries that have been used by state and federal courts in the redistricting process. *See e.g., Legislature v. Reuneche*, 10 Cal.3d 396, 110 Cal Rptr. 718, 516 P.2d 6 (1973); *Carstens v. Lamm*, 543 F.Supp. 68 (D. Colo. 1982); *Flateau v. Anderson*, 537 F.Supp. 257 (S.D.N.Y. 1982).

The honoring of communities of interest is one of the factors courts have recognized as a legitimate state policy in reapportionment. "Factors of compactness, area of political units, historical precedents, economic and political interests . . . are not required as mandatory considerations . . . but rather, permissible considerations . . . so long as they do not detract from or subvert population equality . . . ." *Dunn v. State of Oklahoma,* 343 F.Supp. 320, 329 (W.D. Okla. 1972). This is even more important in the context of *Shaw.* Whereas following jurisdictional lines, as a criterion, may cause problems under a *Shaw* test, a carefully adhered to communities-of-interest criterion is a legitimate state interest in the manner in which the lines were drawn and should serve as a defense to partisan gerrymandering claims.

E. Preservation of Core Existing Districts Creates Consistency

Consistency in maintaining districts is equally a legitimate state interest. Voters know where the district lines have been over the last decade and who has been representing them. Additionally, legislatures rightly presume the existing districts passed, or were litigated into, constitutional and Voting Rights Act muster. Preserving a district with as little change as possible creates consistency.

Legislatures should be able to rely on lines once drawn a decade ago as an effective districting criterion. In the same manner as respecting communities of interest or political subdivisions maintains and respects commonalities, so does maintaining the core of districts from one reapportionment cycle to the next.

The North Carolina Assembly relied heavily on this traditional redistricting criterion by adopting two standards: the partisan advantage standard and the focus on the preservation of the highly litigated 12th district. The partisan makeup of the Congressional delegation under then enacted districting plan was 10 Republicans and 3 Democrats. The criteria were followed in the 2016 districting plan, and, based upon statistical reports using the political data criteria adopted by the Joint Committee, the map was a weaker map for Republicans as compared to the 2011 plan, but that the 2016 plan gave an opportunity to maintain the partisan make-up of the current congressional delegation. With regard to the 12th district, the 2016 map eliminated the serpentine nature of the district but preserved the Charlotte based core of the district.

The criteria of protecting the cores of existing districts recognizes that a district over time creates a community of interest and reduces the voter confusion created by constantly radically changing the configurations of the district lines. When this criterion is used for districts of both parties it will significantly limit the political discretion of the legislature.

F. Avoiding Pairing Incumbents Respects Voters' Choices

The traditional redistricting criteria of avoiding pairing incumbents is inherently a check on partisan gerrymandering. Closely linked to preserving core existing districts, the criteria ensure that a state will enjoy the benefits, perceived or actual, of incumbency in the re-election of existing elected officials regardless of their political affiliation.

The North Carolina Assembly recognized and relied upon this traditional criterion when the Joint Committee, in an overwhelmingly bipartisan vote, adopted its incumbency criteria. The state recognized that candidates for Congress are not required by law to reside in a district they seek to represent but they worked to ensure that incumbent members of Congress were not paired with another incumbent in one of the new districts constructed in the 2016 Congressional Plan. In fact, only two incumbents, Democrat Congressman David Price and Republican Congressman George Holding, were placed in the same district, and both found themselves re-elected as members of the U.S. House of Representatives when Congressman Holding ran for a seat from a different district.

G. Combining the Criteria Increases the Limitations on Discretion by a Legislative Body

If traditional redistricting criteria are combined and strict priorities are given to certain criteria over other criteria, the result is a formulaic draw which will only produce one or two plans. Even without strict priorities, when criteria are merely combined, severe limitations on the number of options available to a legislature are created. As each criterion is layered upon the next, the number of realistic maps available to a legislature is reduced dramatically.

None of plaintiffs' experts in this case used all of the traditional redistricting criteria in their analyses that the legislature used in writing the map. While the criteria used by the North Carolina General Assembly would not have produced one or two possible maps, the realistic options in fact would be reduced to only a few dozen. This is a dramatic and adequate

brake on political gerrymandering even if a legislature seeks to gain political advantage within the confines of the traditional redistricting criteria.

III. Failure to Affirm Reliance on Traditional Redistricting Criteria Encourages Litigation

Were the Court to remove the certainty associated with states relying upon traditional redistricting criteria as a bulwark against federal claims of partisan gerrymandering, most of the 435 congressional districts in the country would become susceptible to federal litigation.

The Court, when Justice O'Connor was the deciding vote on these issues, had seemed to create this safe harbor from racial gerrymandering claims. As clearly stated, in order to invoke strict scrutiny, a plaintiff must show that the state has relied on race in substantial disregard of customary and traditional districting practices. Those practices provide a crucial frame of reference and therefore constitute a significant governing principle in cases of this kind. *Miller v. Johnson*, 515 U.S. 900, 928 (1995) (emphasis added). In fact, application of the Court's standard does not throw into doubt the vast majority of the nation's 435 congressional districts, where presumably the states have drawn the boundaries in accordance with their customary districting principles. That is so even though race may well have been considered in the redistricting process. *Id.* at 929. (emphasis added).

The reason for that safe harbor was to give the states the ability to construct districts that would be secure from judicial scrutiny and not be vulnerable to the latest inventive political science or legal theory or

shift from the court. In the instant case, Appellees are asking the Court to throw into doubt the vast majority of the nation's congressional districts by allowing partisan gerrymandering claims even though states have relied upon traditional redistricting principles in the drawing of those districts. Were the Court to allow this interpretation and disregard the clear adherence of the North Carolina General Assembly to neutral criteria, the Court would open the floodgates to partisan gerrymandering claims throughout the country and truly plunge itself into a region of the political thicket it has deftly avoided.

CONCLUSION

The duty and privilege of redistricting belongs to the states. Each state must, pursuant to the U.S. Constitution and statutory mandates, create new districts following each decennial census. To avoid and limit accusations of racial or partisan gerrymandering, most states have enshrined in their founding documents or adopted objective criteria following concepts of compactness, communities of interest, equality of population, respect for existing districts, and following jurisdictional boundaries. The North Carolina Assembly clearly followed their objective criteria, but now finds itself accused of partisan gerrymandering.

If the Court does not create a safe harbor for states, like North Carolina, who use traditional redistricting criteria, the final map drawer in every state will be the federal courts. Map drawing by litigation was not intended by the founders. It is therefore

necessary for this Court to recognize the use of objective traditional redistricting criteria is a legitimate state purpose which protects states from accusations of partisan political gerrymandering.

For the foregoing reasons, the Court should reverse the decision below.

Respectfully submitted,

JOSEPH M. NIXON
COUNSEL OF RECORD
NIXON LAW FIRM, P.C.
6363 WOODWAY DRIVE
SUITE 800
HOUSTON, TX 77057
(713) 550-7535
JOE@NIXONLAWTX.COM

JAMES E. TRAINOR, III
TRAINOR LAW FIRM, P.C.
4301 W. WILLIAM CANNON DRIVE
SUITE B150
AUSTIN, TX 78749
(512) 924-6501
TREY@TRAINORLAWTX.COM

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